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If I could turn back time: the confusion between two TENETs and the role of trade marks

Christopher Nolan's much-anticipated "mind-bending" film Tenet was released in the UK in late August 2020 to mixed reviews. Nevertheless, it performed well internationally. This is not, however, surprising for Nolan, whose blockbusters Inception, Dunkirk and The Dark Knight trilogy saw massive box office returns.

"The story [in Tenet] takes on ideas of time and how we experience it – interacting a science fiction component with the classic elements of the spy genre", Nolan said. The first trailer of the movie arrived with a simple title logo in which the last two letters, i.e. E and T, were inverted, making an indirect reference to the concept of time inversion which provides a framework for the film's plot.

When the first trailer dropped in December 2019, a bicycle components brand based out of Bellingham in the US state of Washington, also named Tenet, published the following post on Instagram:

<https://www.instagram.com/p/B6Rj2OanvQW/?utm_source=ig_embed>

Christopher Nolan was seemingly unaware that a strikingly similar logo was already being used by the bicycle making company. Tenet Bicycles holds a registration for the mark (USPTO, registration number 5581507) since 9 October 2018, i.e. prior to its adoption for the film. However, in trade mark law, this registration only protects them from the use of the word within the biking industry.

The core aim in registering a trade mark is to acquire a monopoly right over a sign that distinguishes a trader's goods or services from those of others. But, that sign gives in principle protection in the class or classes of goods and services for which it is registered (there are 45 classes under the NICE classification system). For instance, the name Lloyds is used in various classes: a bank, a pharmacy chain and an insurance market, but only one bank, one pharmacy chain, etc. can register the mark Lloyds. Special rules apply, however, to very strong and vulnerably famous marks, which are afforded in trade mark law stronger protection against use by third parties, even on dissimilar goods or services and even if no confusion will arise on the part of the average consumer.

In the case at issue, there was understandably a real concern that people unfamiliar with the Washington-based brand, which launched in June 2018, would think that the recently established company attempted to ride on the coat-tails of the logo used to promote the forthcoming film of a reputable director in order to benefit from its prestige and power of attraction. Being minded to mitigate the risk of confusion, the founder of Tenet Bicycles, Tyler Deschaine, said in a public statement:

I don't have any issue with them using the word Tenet, there are thousands of trademarks for that word across dozens of industries. My issue is with the stabilization, but that is neither here nor there. I've spoken with lawyers and despite the validity of my concerns; I've been advised not to pursue it. Even sending a letter could potentially open myself up to a pre-emptive lawsuit from Warner Brothers. These sorts of things can get dragged on for years and the legal fees can go well into the hundreds of thousands of dollars. We're a tiny component company that is taking baby steps to carve out a place for ourselves in the industry. We in no way want to get raked through the coals of litigation. That would end poorly for us. Also, we've got more important things to focus on, like developing new product and creating rad content. I want to make it clear that I never thought of this scenario as a get rich quick scheme. At the end of the day, I just want to avoid potential damages to my brand's reputation and I suppose this article will help clear the air.

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After the publication of this statement, Warner Bros., the production company behind Nolan's film, reached out to the bike parts manufacturer, with the following response by the director:

Dear Tyler,

Warners just showed me the logo for your company, so I wanted to reach out directly and reassure you that our logo was arrived at without reference to yours. I know this because I designed ours myself, evolving it over the last six years, driven by a fascination with the symmetries of a word which is central to my story and its themes. I thought I'd done something unique – but clearly, you were driven by the same creative impulse. I guess lightning can strike twice, and obviously I understand that you would not want anyone thinking that you had been inspired by our movie's title treatment – feel free to quote me in shooting such misunderstandings down. I love our logo so I hope you won't feel this is necessary, but if you like, I can stop using it since it seems you went public with yours first.

Yours respectfully,
Chris Nolan

This story is a useful reminder that not all trade mark disputes have to result in bitterly fought litigation. Both Deschaine and Nolan took this matter as a simple coincidence, though Tenet Bicycles did ask Warner Bros. to refrain from using the partially inverted logo with the same font for Nolan's film. The producers followed up by slightly amending the film's logo in its latest trailer, which premiered with a plain title card instead. This mutually acceptable outcome represents an amicable compromise and reasonable settlement of the issue, which led to positive publicity for both sides involved, the bicycle company and the film producers.

Another key take-away message is that brands must learn to carefully pick their battles. Warner Bros. producers could have been left with a PR nightmare on their hands, had they attempted to 'discipline' a small company. Resorting to legal correspondence with a threatening tone or aggressive point-scoring enforcement practices that frustrate lawyers and the public might not always be the best way forward. Instead, it is wise to determine on a case-by-case basis how best to address potentially infringing activities. The type of business being written to, the precise nature of the alleged infringement as well as the risk of future litigation and the management of commercial risks to the business itself should be carefully considered. The legal and public relations teams of brands need to work together in assessing whether to pursue cases of infringement, and if so, in what way. The balance between brand protection through robust legal enforcement and the risk of adverse publicity is a delicate one.

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